

REMARKS

I. Summary of Office Action

Claims 1-56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ginsberg U.S. Patent No. 6,754,639 ("Ginsberg").

II. Summary of Reply to Office Action

Claims 1-10, 13, 15-24, 27, 29-38, 40-41, 43-52 and 54-55 have been amended. Claims 14, 28, 42, and 56-58 have been cancelled. Claims 59-62 have been added. The claim amendments and the newly added claims are fully supported by the application as originally filed. Accordingly, entry of the amendments and of the newly added claims is respectfully requested.

III. Reply to Rejection under 35 U.S.C. § 103(a)

Claims 1-56 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ginsberg. Applicants respectfully traverse.

A. Independent Claims 1, 15, 29, and 43

Independent claim 1 as amended recites, *inter alia*:

“... shifting a price of each of the plurality of bids or offers in the selection by one of an absolute value and a relative value.”

Independent claim 15 as amended recites, *inter alia*:

“... shifting a size of each of the plurality of bids or offers in the selection by one of an absolute value and a relative value.”

It is respectfully submitted that the reference cited by the Examiner fails to teach or suggest the above-identified features of claims 1 and 15. Specifically Ginsberg does not disclose or suggest shifting the price or the size for a selected plurality of bids or offers by a common value, *i.e.*, either an absolute value or a relative value, for execution at the shifted price or size.

The Examiner asserts that Ginsberg discloses “substantially simultaneously shifting the selected plurality of bids or offers” at “abstract; Fig. 1 (30); Fig. 2 (330); Fig. 5 (850); col. 4. L 5-10”. Applicants respectfully disagree.

Ginsberg discusses a data processing system that receives transactional data regarding market transactions of fixed income securities, qualifies the data, and then uses the qualified data to determine the term structure of interest rates. The system then updates the operative data set with term structure shifting using pivot points from newly qualified data and uses the updated data to calculate an index value for a portfolio of fixed income securities. (Abstract). That is, Ginsberg uses “proximate securities having new price data as pivot points to recalculate the spot rate for [a] security [in the data set] without updated information.” (Col. 9, L 43-52). Therefore, the term structure shifting recited in the Abstract relates to estimating the spot rate of un-updated fixed income securities and calculating the index value of the portfolio based at least on the estimated spot rate. Estimating the spot rate of fixed income securities in this respect is not the

same nor is it equivalent to shifting a selected plurality of bids or offers as suggested by the Examiner. Indeed, the spot rate of a fixed income security is not a bid or an offer.

Moreover, the Examiner admits that Ginsberg does disclose “price shifting for each of the plurality of bids or offers in the selection by a percentage of the bid or offer of the selection.” The Examiner, however, takes official notice asserting, “that this feature is old and well known in the art.” Applicants respectfully disagree on this point as well and traverse the Examiner’s taking of official notice. Applicants submit that it was not well known at the filing of the present application to shift the price of each of a selected plurality of bids or offers for execution. Applicants further submit that the Examiner’s taking of official notice is improper and that Applicants’ traversals in prior responses have not been inadequate, as explained in greater detail below. Accordingly, Applicant’s demand that the Examiner produce documentary evidence of the fact so noticed if the rejection is to be maintained.

Finally, there is no motivation to combine Ginsberg with the fact officially noticed by the Examiner. The Examiner asserts that

[b]y shifting terms (col.5, L 43-49) such as maturity by laddering, the price of the bonds shift such that the basket of securities shift (col. 4, L 5-10). It would have been obvious to one of ordinary skill in the art at the time of applicant’s invention to implement this feature for the advantage of adjusting data for changing market conditions.

Applicants disagree. At (col. 5, L 43-49), Ginsberg discusses using updated values as pivot points to update the term structure of securities that have not been updated to obviate the problems associated with prior indexes which used stale data to calculate the price of the indexes. (Col. 2, L 65-col. 3, L 3). Thus, Ginsberg implements term shifting to calculate an index price to reflect unchanged market conditions, contrary to the Examiner’s position.

With regard to claim 15, the Examiner has not provided any reference or even taken official notice as to the “shifting a size of each of the plurality of bids or offers in the selection” feature thereof.

The Examiner has failed to establish a prima facie case of obviousness with respect to claims 1 and 15 for the foregoing reasons. Claims 29 and 43 include similar limitations as those of claims 1 and 15. The Examiner has therefore failed to establish a prima facie case of obviousness with respect to claims 29 and 43 for at least the same reasons.

Accordingly, for at least the foregoing reasons, applicant's independent claims 1, 15, 29 and 43 are allowable over Ginsberg.

B. Independent Claims 59 and 62

Independent claim 59 recites:

A method comprising:
receiving a selection of a plurality of orders to trade at least one item via an interface comprising fields for selecting each of the plurality of orders, each of the orders having at least one trading variable associated therewith;
increasing or decreasing the at least one trading variable of each of the selected plurality of orders by one of an absolute value and a relative value; and
executing at least one of the selected trade orders at the increased or decreased trading variable.

Independent claim 62 recites:

A method comprising:
receiving a selection of a plurality of orders to trade at least one item via an interface comprising fields for selecting each of the plurality of orders, each of the orders having at least one trading variable associated therewith and assigned a suspended status;
increasing or decreasing the at least one trading variable of each of the selected plurality of orders by one of an absolute value and a relative value;
assigning the selected plurality of orders an active status; and
executing at least one of the selected trade orders at the increased or decreased trading variable.

Applicants submit that the reference cited by the Examiner further fails to teach or suggest the above-identified features of claims 59 and 62. Specifically Ginsberg does not disclose or suggest increasing or decreasing the at least one trading variable, such as a price or size, of each of the selected plurality of orders, such as at least one of a bid and offer, by one of an absolute value and a relative value. As discussed above, Ginsberg merely estimates the spot price of an un-updated fixed income security. Ginsberg further fails to disclose receiving a selection of a plurality of orders to trade at least one item via an interface comprising fields for selecting each of the plurality of orders and executing the orders at the increased or decreased trading variable.

Accordingly, for at least the foregoing reasons, Applicant's independent claims 59 and 62 are also allowable.

C. The Dependent Claims

Dependent claims 2-14, 16-28, 30-42, 44-56, and 60-61 are patentable over the references of record by virtue of their dependency to claims 1, 15, 29, 43, and 59, respectively. Applicants reserve the right to argue at a later date the features recited in the dependent claims that may further distinguish the present application over the art of record.

The Examiner has taken official notice with respect to the limitations of nearly all of the dependent claims. Specifically, the Examiner has officially noticed claims 9, 23, 37, 51 (suspension wherein the status of the at least one of the plurality bids or offers a status), claims 11, 25, 39, 53 (cancelling at least one of the plurality of bids or offers), claims 12, 26, 40, 54 (receiving a default parameter from that includes a default status parameter for the plurality of bids or offers), 13, 27, 41, 55 (receiving a default parameter from a user that includes a default shift parameter for the plurality of bids or offers), and 14, 28, 42, 56 (receiving a default parameter from a user that is used to shift the prices of the plurality of bids or offers). Applicants disagree and traverse the Examiner's taking of official notice with regard to each of the features recited above. Applicants submit that these features of claims 9, 11-13, 23, 25-27, 37, 39-41, 51, and 53-56 were not well known at the filing of the present application. Applicants further submit that the Examiner's taking of official notice is improper with respect to each of these claims and that Applicants' traversals in prior responses have not been inadequate, as explained in greater detail below.

IV. Official Notice

A. Official Notice Is Inappropriate

The Examiner's use of official notice as a basis of forming an obvious type rejection for claims 1, 9, 11-13, 15, 23, 25-27, 29, 37, 39-41, 43, 51, and 53-56 is

inappropriate under the substantial evidence standard of review. In a determination of obviousness, factual findings as to scope and content of the prior art, level of ordinary skill in the art, differences between the claimed invention and the prior art, and secondary considerations of nonobviousness must be supported by substantial evidence. *Novamedix Distrib. Ltd. v. Dickinson*, 175 F. Supp. 2d 8, 9 (D.D.C. 2001).

General conclusions about what it believed to be “basic knowledge and common sense [in the art] that is not based on any evidence in the record lacks substantial evidence support.” *In re Zurko*, 258 F.3d 1379, 1385 (Fed Cir. 2001). “The [Examiner] cannot reach conclusions based upon his own assessment, understanding, or experience of what it considers to be basic knowledge or common sense”, instead, “the [Examiner] must point to some concrete evidence in the record in support of these findings.” *Id.* at 1386. *See* MPEP § 2144.03 (C).

Official notice may however be taken judiciously and in very limited circumstances. MPEP § 2144.03. For instance, official notice may be taken where facts asserted to be well known are “capable of such instant and unquestionable demonstration as to defy dispute.” *In re Ahlert*, 424 F.2d 1088, 1091 (CCPA 1970). Similarly, official notice may be taken for facts that are of such notorious in character as to serve only to fill in the gaps that may exist in the evidentiary showing made by the Examiner. *In re Zurko*, 258 F.3d at 1386. Official notice is not appropriate “as the principal evidence upon which a rejection [is] based” nor is it appropriate for “core factual findings in a determination of patentability.” *Id.* at 1385-86; *In re Ahlert*, 424 F.2d at 1028. Official notice is only appropriate “for conclusions as to peripheral issues.” 258 F.3d at 1386.

Consistent with this limited applicability, very few instances of official notice have been deemed appropriate. In *In re Chevenard*, for example, the court held that official notice was proper as to a brief heating at a higher temperature being equivalent to a longer heating at lower temperatures. *In re Chevenard*, 139 F.2d 711, 713 (CCPA 1943). Similarly, in *In re Ahlert*, official notice was proper as to “adjust [the]

intensity of a flame in accordance with the heat requirement.” 424 F.2d at 1091. In *In re Soli*, the court held that it was well within the skill of one skilled in the art to use a control in various experimental procedures in the field of bacteriology. *In re Soli*, 317 F.2d 941, 946 (CCPA 1963). Indeed, the *Soli* court noted that “[o]ne need not stir from the TV to discover that ‘control’ groups are used in such everyday occurrences as the testing of the efficacy of toothpaste.” *Id.* FN 4.

The material in claims 1, 9, 11-13, 15, 23, 25-27, 29, 37, 39-41, 43, 51, and 53-56 officially noticed by the Examiner is not capable of instant and unquestionable demonstration as to defy dispute nor is it of such notorious character as to serve only to fill in the gaps in the evidence of record. Rather, Applicants argue herein and in previous responses that the material noticed by the Examiner is both novel and unobvious over the reference cited by the Examiner. Specifically, Applicants argue with respect to claims 1 and 29 that shifting the price of each of the selected plurality of bids or offers by a common variable is novel and unobvious over Ginsberg. The Examiner’s continued reliance on official notice is therefore inappropriate insofar as the facts officially noticed serve as the principal evidence for the basis of the Examiner’s rejections for claims 1 and 29, as well as claims 9, 11-13, 15, 23, 25-27, 37, 39-41, 43, 51, and 53-56.

Applicants further submit the Examiner’s liberal use of official notice – official notice used to reject 20 out of 56 claims— as evidence of the Examiner’s inappropriate use of official notice. Such liberal use is contrary to the mandate that official notice be used judiciously and in limited circumstances. MPEP § 2144.03. Accordingly, Applicants demand that the Examiner produce documentary evidence of the fact so noticed if the rejections are to be maintained.

B. Applicants Adequately Traversed Official Notice

The Examiner asserts that Applicants traversal of the Examiner's taking of official notice is inadequate and therefore takes the facts officially noticed as admitted prior art. Applicants respectfully disagree.

A traversal of official notice is adequate if the traversal is more than a mere general allegation that the claims define a patentable invention without reference to the Examiner's assertion of official notice. MPEP § 2144.03(C). In the Reply to the March 8, 2005 Office Action, at page 16, Applicants traversed with specificity the Examiner's taking official notice with regard to shifting price and size of a plurality of bids or offers. Moreover, Applicants asserted therein that the Examiner's taking of official notice was not justified. This traversal is not a mere allegation that the claims define a patentable invention and is therefore adequate. Traversals in later filed replies were similarly adequate. Accordingly, Applicants request that the Examiner withdraw the conclusion that the Applicants' traversal of official notice is inadequate.

V. Conclusion

For the above reasons, Applicants submit that the pending and newly added claims are patentable over the reference cited by the Examiner. Accordingly, reconsideration and allowance of claims 1-62 are therefore respectfully solicited. To expedite prosecution, the Examiner is invited to contact the Applicant's representative at 212-829-5407.

Respectfully submitted,

/AP/

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